APPENDIX A

UNITED STATES DEPARTMENT OF LABOR
BUREAU OF EMPLOYEES' COMPENSATION
EIGHTH COMPENSATION DISTRICT

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

STEVE S. WARCHOL, Claimant

vs.

STRACHAN SHIPPING COMPANY, Employer
TEXAS EMPLOYERS' INSURANCE ASSOCIATION,
Insurance Carrier

COMPENSATION ORDER AWARD
OF COMPENSATION

File No. 8-6269

Such investigation in respect to the above-entitled claim having been made so is considered necessary, and

A hearing having been duly held in conformity with law, The Deputy Commissioner makes the following

FINDINGS OF FACT

1. That on August 9, 1968, Steve S. Warchol, hereinafter referred to as the "employee" or "claimant" was in the employ of the Strachan Shipping Company, Houston, Texas, in the Eighth Compensation District established under the provision of the Longshoremen's and Harbor Workers' Compensation Act;

2. That the liability of the employer for compensation under said Act was insured by the Texas Employers' Insurance Association;

3. That on said date, the employee herein, while performing service for the employer as a longshoreman aboard the M/S "Kyoshin Mara" afloat upon the navigable waters of the United States, sustained personal injury when his right arm was caught between a load of plywood dunnage and the dockhouse;

4. That the above described injury arose out of and in the course of the employment;

5. That written notice of injury was not given to the employer within thirty days, but the employer had knowledge of the injury and has not been prejudiced by the lack of such written notice;

6. That the employer furnished the claimant with medical treatment in accordance with the provisions of Section 7(a) of the Act;

7. That the average weekly earnings of the employee at the time of injury were $209.66;

8. That the claimant was wholly disabled for work from September 22, 1968, to October 29, 1968, and from February 12, 1969, to March 19, 1969, inclusive, and for such temporary total disability is entitled to 10-4/7 weeks of compensation at $70.00 per week, or $740.00; and was partially disabled for work from October 30, 1968, to February 11, 1969, 15 weeks and for such temporary partial disability is entitled to compensation at various weekly rates from October 30, 1968, to December 24, 1968, and at $35.00 per week from December 25, 1968, to February 11, 1969, $554.88, or a total of $1,294.88;

9. That the employer and the insurance carrier have paid to the claimant $934.88 in compensation;

10. That the employee claims the injury caused permanent partial loss of use of the right hand for which he applied for a schedule of compensation pursuant to Section 8(c) of the Act;

11. That at the request of the claimant a hearing was held by the Deputy Commissioner on January 6, 1970 to resolve the issue of whether or not the injury caused temporary disability after February 11, 1969 and whether the injury caused permanent loss of use of the employee's right hand, and if so, the nature and degree thereof;

12. That at the time of such hearing the Deputy Commissioner received the testimony of two physicians who had examined the claimant's injured right hand;

13. That one such physician, Dr. Ross Davis, testified that he had treated the claimant for right hand complaints from November 11, 1968 through October 9, 1969, such complaints being described as intermittent, painful, diffuse, swelling causing loss of strength, grip and motion in the injured member; that such complaints were attributable to a fibrosis condition residual to the August 9, 1968 employment injury, that by March 19, 1969 the claimant had attained maximum medical improvement from the injury and had sustained a 10 percent permanent partial impairment of the right hand;

14. That the other physician, Dr. Fred B. Kossler, had performed medical examinations of the claimant's hand on January 20, 1969 and on April 8, 1969 at which times he noted there was a slight swelling in the area of the metacarpal phalangeal joint of the long finger, but that such condition was not considered to be a significant finding; that the medical evidence being in conflict is not

unusual; that in view of the duration of the claimant's complaints and the undulating nature of his right hand condition, the opinion of the treating physician, Dr. Ross Davis, a specialist in orthopedic disorders, appears more reasonable;

15. That at the hearing the Deputy Commissioner inspected the injured member and observed a slight swelling over the first metacarpo-phalangeal joint;

16. That it is the determination of the Deputy Commissioner that the claimant's injury resulted in temporary disability through March 19, 1969; that the claimant had attained maximum medical improvement on March 19, 1969 and sustained a 10 percent permanent partial disability of the right hand as a result of his August 9, 1968 employment injury for which he is entitled to receive 24.4 weeks of compensation from that date;

Upon the foregoing findings of fact the Deputy Commissioner makes the following:

AWARD

That the employer, the Strachan Shipping Company, and the insurance carrier, Texas Employers' Insurance Association, shall pay to the claimant compensation as follows: For temporary total disability from September 22, 1968, to October 29, 1968, and from February 12, 1969, to March 19, 1969, inclusive, 10-4/7 weeks at $70.00 per week, $740.00; temporary partial disability from October 30, 1968, to December 24, 1968, 8 weeks at various weekly rates, $309.88 and from December 25, 1968 to February 11, 1969, 7 weeks at $35.00 per week, $245.00; and for permanent partial disability from March

20, 1969, to September 6, 1969, 24.4 weeks at $70.00 per week, $1,703.00; or a total of $3,002.88.

The employer and the insurance carrier having paid $934.88 to the claimant shall forthwith pay the balance of $2,068.00, together with interest payable in accordance with Section 14(b) and (m) of the Act, 33 U.S.C. 914(b) and (m), on each past due installment of compensation at the rate of 6 percent per annum from its original due date until paid.

An attorney's fee of $600.00 is approved in favor of Mr. Ben Ramey, Attorney, for services rendered on behalf of the claimant ($200.00 of which is for consultation and testimony of Dr. Ross Davis), such sum to be a lien upon and to be paid out of this award.

If payment is not made within 10 days of the date specified in this order, additional compensation for delay shall be paid at the rate of 20 percent in accordance with Section 14(f) of the Act, 33 U.S.C. 914(f). If default in payment continues over 30 days, application should be made to the deputy commissioner within one year after such default for a supplementary order for enforcement of this award by the federal court in accordance with Section 18(a) of the Act, 33 U.S.C. 918(a).

Given under my hand and filed at Galveston, Texas this 23rd day of January, 1970.

/s/ ROBERT D. WEDEMEYER
Deputy Commissioner
Eighth Compensation District

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Compensation Order was sent to this claimant, the employer and the insurance carrier at the last known address of each as follows:

By Certified Mail:

MR. STEVE S. WARCHOL
3314 Daisy
Pasadena, Texas 77505

STRACHAN SHIPPING COMPANY
1400 Cotton Exchange Bldg.
Houston, Texas 77002

TEXAS EMPOYERS' INSURANCE ASSN.
338 S. Wayside Drive
Houston, Texas 77011

By Regular Mail:

Bureau of Employees' Compensation
U. S. Department of Labor
Washington, D. C. 20211

Mr. Ben H. Ramey, Attorney
1210 Houston First Savings Bldg.
711 Fannin
Houston, Texas 77002

Mr. Mayo Thompson, Attorney
877 San Jacinto Building
Houston, Texas 77002

/s/ ROBERT D. WEDEMEYER
Deputy Commissioner
Eighth Compensation District

RDW:sub

Mailed on: January 23, 1970

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 70-H-57

STRACHAN SHIPPING CO., ET AL

v.

ROBERT D. WEDEMEYER, Deputy Commissioner, et al

JUDGMENT

Of the view that an award of the Deputy Commissioner of interest on compensation payments which he found to be past due, in the agreed amount of $84.42, is, under the circumstances here found to exist, in accordance with law (this being the only issue in controversy), the Deputy Commissioner's award is affirmed. The defendant's motion for summary judgment, and to confirm the award, is granted and the action is dismissed.

Done at Houston, Texas, this 10th day of March, 1971.

BEN C. CONNALLY
United States District Judge

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 71-2088

STRACHAN SHIPPING COMPANY and TEXAS EMPLOYERS' INSURANCE ASSOCIATION,
Plaintiffs-Appellants,

versus

ROBERT D. WEDEMEYER, Deputy Commissioner, and STEVE S. WARCHOL,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas

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(December 29, 1971)

Before RIVES, AINSWORTH and GODBOLD, Circuit Judges.

RIVES, Circuit Judge: The sole question to be decided is whether a Deputy Commissioner,[1] in making an award of compensation under the Longshoremen's

1. Bureau of Employees' Compensation, United States Department of Labor.

and Harbor Workers' Compensation Act,[2] has authority to include interest at the rate of 6 per cent per annum on each installment of compensation from the time payment would have been due had not the employer controverted the right to compensation.

There is no dispute about the facts now material. On August 9, 1968, Steve S. Warchol, a longshoreman in the employ of Strachan Shipping Company, acting in the course and scope of his employment, suffered injuries to his right arm, of which Strachan at the time had knowledge. Texas Employer's Insurance Association, Strachan's insurance carrier, furnished Warchol with such medical care as was required from August 9 to September 22, 1968, on which date the injuries became disabling. The carrier then voluntarily paid Warchol compensation for temporary total disability from September 22, 1968 through October 29, 1968 pursuant to section 914(a) of the Act,[3] and subsequently paid additional compensation for temporary partial disability from October 30, 1968 through February 11, 1968. Strachan and its carrier notified the Deputy Commissioner of the beginning and suspension of payments as required by section 914(c) of the Act.[4] Informal adjudicatory processes under the direc-

2. 33 U.S.C. § 901, *et seq.*

3. "(a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer." 33 U.S.C. § 914(a). For convenience reference is confined to the sections of the U.S. Code.

4. "(c) Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the deputy commissioner, in accordance with a form prescribed by the Secretary, that payment of compensation has begun or has been suspended, as the case may be." 33 U.S.C. § 914(c).

tion of the Deputy Commissioner failed to produce an agreement as to what, if any, additional compensation was owed. As required by section 914(d) of the Act,[5] Strachan and its carrier then filed notice with the Deputy Commissioner that Warchol's claim for additional compensation was controverted.

The Deputy Commissioner held a formal hearing on January 6, 1970, and on January 23, 1970 awarded Warchol additional compensation for temporary total disability and for a 10 per cent permanent partial disability of his right hand. Though theretofore hotly disputed, the Deputy Commissioner's findings of fact and award of compensation were not appealed to the district court and are not now involved, except as to the following award of interest:

> "The employer and the insurance carrier having paid $934.88 to the claimant shall forthwith pay the balance of $2,068.00, together with interest payable in accordance with Section 14(b) and (m) of the Act, 33 U.S.C. 914(b) and (m), on each past due installment of compensation at the rate of 6 percent per annum from its original due date until paid."[6]

The parties have stipulated that the interest involved amounted to only $84.42. As a test to decide the single legal issue of the authority of the Deputy Commissioner to award interest, the case was submitted to the district court on cross motions for summary judgment with supporting briefs. The district court entered a succinct judg-

5. 33 U.S.C. § 914(d).

6. Both 33 U.S.C. § 921(b) and the Administrative Procedure Act, 5 U.S.C. §§ 701-706 vested the district court with jurisdiction. This Court has jurisdiction under 28 U.S.C. § 1292.

ment affirming the Deputy Commissioner's award as follows:

"JUDGMENT

"Of the view that an award of the Deputy Commissioner of interest on compensation payments which he found to be past due, in the agreed amount of $84.42, is, under the circumstances here found to exist, in accordance with law (this being the only issue in controversy), the Deputy Commissioner's award is affirmed. The defendant's motion for summary judgment, and to confirm the award, is granted and the action is dismissed.

"Done at Houston, Texas, this 10th day of March, 1971.

"BEN C. CONNALLY
"United States District Judge"

This appeal ensued.

Neither section 914(b) nor 914(m) of the Act, referred to by the Deputy Commissioner, contains any express authority for the payment of interest in the absence of a formal award of compensation. Section 914(b)[7] relates to the due dates of compensation paid without a formal award. Section 914(m) refers to the payment of "any amount accruing as interest upon defaulted compensation collectible under section 918 of this title." Section 918 relates to the collection of defaulted payments due

7. "(b) The first installment of compensation shall become due on the fourteenth day after the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter compensation shall be paid in installments, semimonthly, except where the deputy commissioner determines that payment in installments should be made monthly or at some other period." 33 U.S.C. § 914(b).

under an award of compensation and does not refer to interest payable in the absence of an award such as here involved.

The Longshoremen's and Harbor Workers' Compensation Act was first enacted in 1927,[8] while the provision for interest on defaulted payments due under an award of compensation, referred to in sections 914(m) and 918 first appeared in 1956.[9] The 1956 Act contains the only express reference to payment of interest. Previously there had been no express provision for interest as such.[10] There had been provisions for adding to each installment of compensation payable without an award and not paid within fourteen days after it be comes due a lump sum amount of 10 per cent of such delinquent installment,[11] and for adding to unpaid compensation payable under the terms of an award which is not paid within ten days after it becomes due an amount equal to 20 per cent of such delinquent com-

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8. March 4, 1927, c. 509, 44 Stat. 1424.

9. July 26, 1956, c. 735 §§ 5 and 6, 70 Stat. 655.

10. However, it has long been established that,
"the failure to mention interest in statutes which create obligations has not been interpreted by this Court as manifesting an unequivocal congressional purpose that the obligation shall not bear interest. *Billings v. United States*, 232 U.S. 261, 284-288. For in the absence of an unequivocal prohibition of interest on such obligations, this Court has fashioned rules which granted or denied interest on particular statutory obligations by an appraisal of the congressional purpose in imposing them and in the light of general principles deemed relevant by the Court. See, *e.g.*, *Royal Indemnity Co. v. United States*, *supra* [313 U.S. 289, 295-297]; *Board of Comm'rs v. United States*, 308 U.S. 343."
Rodgers v. United States, 1947, 332 U.S. 371, 373.

11. 33 U.S.C. § 914(e).

pensation.[12] These 10 per cent and 20 per cent additions are not increased by the length of the delinquency. They bear little resemblance to interest, and should rather be treated as penalties.

The 1956 amendatory act providing for interest on defaulted payments due under an award affords little, if any, inference as to whether interest can be required from the time payment would have been due without an award had not the employer controverted the right to compensation. There is then no express provision of the Act either authorizing or forbidding the Deputy Commissioner to order the payment of such interest.

The question is complicated by the fact that for about forty years after the Act was first passed in 1927 no interest was required on delinquent installments paid without an award. Only within the last few years have the Deputy Commissioners begun including interest as a part of their awards.

Appellants' argument is based essentially on the language of the Act. It may be summarized as follows: (1) Neither of the sections relied on by the Deputy Commissioner[13] authorizes an award of interest; (2) section 914(a) provides that compensation shall be paid without an award "except where liability to pay compensation is controverted by the employer," and the employer did so controvert in this case; (3) section 914(e) provides for 10 per cent addition to compensation payable without an award and not paid within fourteen days after it becomes due "unless notice is filed under sub-

12. 33 U.S.C. § 914(f).

13. 33 U.S.C. §§ 914(b) and (m).

division (d) of this section," and the employer did properly file notice under subdivision (d) that it controverted the right to payment of compensation; (4) subsection 914(f) provides for a 20 per cent addition to compensation payable under the terms of an award and not paid within ten days after it becomes due, but the employer paid within such ten days; (5) if in any event neither the 10 per cent addition provided by 914(e) nor the 20 per cent addition provided by 914(f) relates to interest, and the only provision for interest is contained in 914(m) and 918 as added in 1956[14] and is limited to interest on defaulted payments due under an award of compensation, and there was no such default in this case. The appellants conclude that Congress expressly provided under what circumstances an employer or carrier has to pay "additional compensation" or "interest," none of which are applicable to this case; and that the Deputy Commissioner's award of 6 per cent interest on each installment from the time payment would have been due had not the employer controverted the right to compensation is an unwarranted attempt to exercise legislative power to amend the Act. From a strictly literal reading of the Act alone, the position of the appellants would appear to be impregnable.

On his part, the Deputy Commissioner, following the lead of the Bureau of Employees' Compensation and the Secretary of Labor[15] argues that the overriding purpose of the Act is to provide for prompt periodical payments of compensation to the injured employee ex-

14. See n. 9, *supra*.

15. Who is authorized to make rules and regulations for the administration of the Act. 33 U.S.C. § 939(a).

cept where liability to any compensation is controverted by the employer;[16] and that the employee does not receive the amount of compensation due him where the employer controverts his right unless interest is added to the delayed payments. The Deputy Commissioner points out that for 26 years prior to 1962 the NLRB in the absence of express authority granted by the statute,[17] followed the practice of not including interest in its orders for compensation. Following the 1962 change of practice, this Circuit and seven other circuits unanimously upheld awards of interest.[18] The rationale was well expressed by then Circuit Judge Burger, as follows:

> "In the evolution of the law of remedies some things are bound to happen for the 'first time.' As a supplement to existing remedies long approved we cannot say that the allowance of interest is other than a factor which effectuates the policies of the Act for it is plainly in the direction of making the employee whole. Virginia Electric & Power Co. v. National Labor Relations Board, 319 U.S. 533, 540-541, 63 S.Ct. 1214, 87 L.Ed. 1568 (1943). We cannot regard changes in remedial mechanisms as beyond the Board's powers so long as they reason-

16. 33 U.S.C. § 914(a), n. 3 *supra*.

17. 29 U.S.C. § 160(c).

18. N.L.R.B. v. American Compress Warehouse, 5 Cir. 1967, 374 F.2d 573, 575; N.L.R.B. v. George E. Light Boat Storage, Inc., 5 Cir. 1967, 373 F.2d 762, 766; Philip Carey Mfg. Co., Miami Cabinet Div. v. N.L.R.B., 6 Cir. 1964, 331 F.2d 720, *cert. denied*, 379 U.S. 888; Revere Copper & Brass, Inc. v. N.L.R.B., 7 Cir. 1963, 324 F.2d 132; Marshfield Steel Co. v. N.L.R.B., 8 Cir. 1963, 324 F.2d 333; N.L.R.B. v. Globe Products Corp., 4 Cir. 1963, 322 F.2d 964; International Brotherhood of Operative Potters v. N.L.R.B., 116 U.S. App. D.C. 35, 320 F.2d 757 (1963); Reserve Supply Corp. of Long Island, Inc. v. N.L.R.B., 2 Cir. 1963, 317 F.2d 785; N.L.R.B. v. Local 138, 2 Cir. 1967, 385 F.2d 874.

> ably effectuate the congressional policies underlying the statutory scheme. National Labor Relations Board v. Seven-Up Bottling Co., supra [344 U.S. 344 (1953)]."

International Brotherhood of Operative Potters v. N.L. R.B., D.C. Cir. 1963 320 F.2d 757, 761.

The Deputy Commissioner further points to the provisions of section 02.1(a) and (b) and section 31.1 of the Longshoremen's Compensation Act Regulations of 1938[19] recognizing the ". . . particularized principles which have general applicability to workmen's compensation statutes (State and Federal) . . ." and directing adherence to such principles as stated in both federal and state decisions. In the absence of a provision either providing for or forbidding the allowance of interest in compensation cases, most state courts have awarded interest on each installment from its due date.[20] The rationale as expressed by the Supreme Court of Florida is particularly pertinent to the case at bar:

> "The compensation act is to be construed in favor of the working man. Not only have we said this on many occasions but the act itself so provides. Section 440.26, F.S.A. If an employer controverts the right to compensation, the penalty fixed by the law for an unsuccessful contest is not only the payment in full of the award from the beginning but also attorneys' fees and other specified costs. If a carrier fails to pay an installment due without an award within the specified period of fourteen days, under specified circumstances, the carrier suffers a

19. 20 C.F.R. 02.1 and 31.1.

20. The cases are collected in 101 C.J.S. Workmen's Compensation § 847, pp. 180, 181.

> penalty of 10% thereof, Section 440.20(5); and if the carrier fails to pay an award within fourteen days, there may be added thereto an amount equal to 20% thereof. Section 440.20(6), F.S. 1951, F.S.A. The basic philosophy of the act is to insure and secure prompt payment of compensation or other awards to the man who works for wages or his beneficiaries. This Court knows that the smaller the award of compensation, the greater is the need for the prompt payment thereof. It is common knowledge that those who work for small wages are dependent upon such wages for their immediate livelihood. Inherent in the act itself is the intention that if such an award is wrongfully withheld (and under the law it is wrongfully withheld if it be eventually determined that it should have been paid), the person or the party which should have paid it should be compelled to pay, as damages for its detention, lawful interest thereon from the date it should have been paid . . ."

Parker v. Brinson Construction Company, Fla. 1955, 78 So.2d 873, 875.

Under a well-settled rule, this Court should show "great deference to the interpretation given the statute by the officer and agency charged with its administration."[21]

We find the argument of the Deputy Commissioner to be sound and convincing. Accordingly, we affirm the judgment of the district court.

AFFIRMED.

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21. Udall v. Tallman, 1965, 380 U.S. 1, 16; Red Lion Broadcasting Co. v. FCC, D.C. Cir. 1969, 395 U.S. 367, 381; United States v. City of Chicago, 1970, 400 U.S. 8, 10; FDIC v. Sumner Financial Corporation, 5 Cir. 1971, ____F.2d____ [No. 71-1317, decided Nov. 30, 1971, slip opinion p. 5].

APPENDIX B

APPENDIX B

§ 914. Payment of compensation

(a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(b) The first installment of compensation shall become due on the fourteenth day after the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter compensation shall be paid in installments, semimonthly, except where the deputy commissioner determines that payments in installments should be made monthly or at some other period.

(c) Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the deputy commissioner, in accordance with a form prescribed by the Secretary, that payment of compensation has begun or has been suspended, as the case may be.

(d) If the employer controverts the right to compensation he shall file with the deputy commissioner on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice in accordance with a form prescribed by the Secretary, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

(e) If any installment of compensation payable without an award is not paid within fourteen days after it becomes due, as provided in subdivision (b) of this section, there shall be added to such unpaid installment an amount equal to 10 per centum thereof, which shall be paid at the same time as, but in addition to, such installment, unless notice is filed under subdivision (d) of this section, or unless such nonpayment is excused by the deputy commissioner after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(f) If any compensation, payable under the terms of an award, is not paid within ten days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20 per centum thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in section 921 of this title and an interlocutory injunction staying payments is allowed by the court as provided therein.

(g) Within sixteen days after final payment of compensation has been made, the employer shall send to the deputy commissioner a notice, in accordance with a form prescribed by the Secretary, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the deputy commissioner within such time the Secretary shall assess

against such employer a civil penalty in the amount of $100.

(h) The deputy commissioner (1) may upon his own initiative at any time in a case in which payments are being made without an award, and (2) shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, or hold such hearings, and take such further action as he considers will properly protect the rights of all parties.

(i) Whenever the deputy commissioner deems it advisable he may require any employer to make a deposit with the Treasurer of the United States to secure the prompt and convenient payment of such compensation, and payments therefrom upon any awards shall be made upon order of the deputy commissioner.

(j) Whenever the deputy commissioner determines that it is in the interest of justice, the liability of the employer for compensation, or any part thereof as determined by the deputy commissioner with the approval of the Secretary, may be discharged by the payment of a lump sum equal to the present value of future compensation payments commuted, computed at 4 per centum true discount compounded annually. The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which he is

entitled to compensation shall be determined in accordance with the American Experience Table of Mortality, and the probability of the remarriage of the surviving wife shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(k) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

(l) An injured employee, or in case of death his dependents or personal representative, shall give receipts for payment of compensation to the employer paying the same and such employer shall produce the same for inspection by the deputy commissioner, whenever required.

(m) The total money allowance payable to an employee as compensation for an injury under this chapter shall in no event exceed in the aggregate the sum of $24,000: *Provided*, That this limitation shall not apply to cases of permanent total disability or death: *And provided further*, That in applying this limitation there shall not be taken into account any amount payable under section 908(g) of this title for maintenance during rehabilitation or any amount of additional compensation required to be paid under this section for delay or default in the payment of compensation or any amount accruing as interest upon defaulted compensation collectible under section 918 of this title.

§ 918. Collection of defaulted payments; special fund

(a) In case of default by the employer in the payment of compensation due under any award of compensation for a period of thirty days after the compensation is due and payable, the person to whom such compensation is payable may, within one year after such default, make application to the deputy commissioner making the compensation order or a supplementary order declaring the amount of the default after investigation, notice, and hearing, as provided in section 919 of this title, the deputy commssioner shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award, the deputy commissioner may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the employer has his principal place of business or maintains an office, or for the judicial district in which the injury occurred. In case such principal place of business or office or place where the injury occurred is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the United States District Court for the District of Columbia. Such supplementary order of the deputy commissioner shall be final, and the court shall upon the filing of the copy enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits

at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the court.

(b) In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the Secretary of Labor may, in his discretion and to the extent he shall determine advisable after consideration of current commitments payable from the special fund established in section 944 of this title, make payment from such fund upon any award made under this chapter, and in addition, provide any necessary medical, surgical, and other treatment required by section 907 of this title in any case of disability where there has been a default in furnishing medical treatment by reason of the insolvency of the employer. Such an employer shall be liable for payment into such fund of the amounts paid therefrom by the Secretary of Labor under this subsection; and for the purpose of enforcing this lability, the Secretary of Labor for the benefit of the fund shall be subrogated to all the rights of the person receiving such payment or benefits, including the right of lien and priority provided for by section 917 of this title, as against the employer and may by a proceeding in the name of the Secretary of Labor under section 918 of this title or under subsection (c) of section 921 of this title, or both, seek to recover the amount of the default or so much thereof as in the judgment of the Secretry is possible, or the Secretary may settle and compromise any such claim.

SUPREME COURT, U. S.
Supreme Court, U. S.
FILED
MAY 16 1972
MICHAEL RODAK, JR., CLERK

No. 71-1226

In the Supreme Court of the United States

OCTOBER TERM, 1971

STRACHAN SHIPPING COMPANY and
TEXAS EMPLOYERS' INSURANCE ASSN., PETITIONERS

v.

ROBERT D. WEDEMEYER, Deputy Commissioner,
and STEVE S. WARCHOL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT DEPUTY COMMISSIONER IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.